276.

SUPREME COURT OF THE UNITED STATES.

No. 218.

THE UNITED STATES, APPELLANTS,

vs.

JOHN GUSMAN.

APPEAL FROM THE DISTRICT COURT, U. S., FOR THE EASTERN DISTRICT OF LOUISIANA.

INDEX.

	Original.	Print.
Petition	1	2
Citation	3	3
Answer of defendants	4	4
Entry on minutes, continuance	5	4
" " " order fixing cause	6	4
" " " continuance	6	5
Replication of Petr.	6	5
Entry on minutes, hearing and submission	7	5
Nota in reference of evidence	7	6
Plat of survey by Abraham Penn, U. S. dp. surv'or	7	6
Entry on minutes, judgment	8	6
" " " order of appeal	9	7
Agreement adjourning return day of appeal	10	7
Clerk's and judge's certificates	12	8

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United States of America, eastern district of Louisiana, United States district court.

JOHN GUSMAN
vs.
THE UNITED STATES. } No. 19 of land docket.

Be it remembered, that on the twenty-sixth day of May, A. D. 1846, John Gusman, of the said district, by his attorney and solicitor, Alfred Hennen, came into the office of the clerk of the district court of the United States, for the district of Louisiana, and under the act of June 17th, 1844, there caused to be filed, in the words following, his petition.

1846, May 26th.

UNITED STATES OF AMERICA,
District of Louisiana.

To the honorable the judge of the district court of the United States, for the district of Louisiana.

The petition of John Gusman, residing in the parish of St. Tammany, State of Louisiana, respectfully shows, that your petitioner is the true and lawful owner of a tract or parcel of land, situated in the parish of St. Tammany, State of Louisiana, situated on the eastern side of the bayou Bonfouca, about nine miles from its confluence with Lake Pontchartrain, having a front on said bayou of three miles, with the depth of a double concession, being the same on which your petitioner now resides, and which was derived by divers mesne conveyances from the heirs of Vincent Rillieux, and it forms a part of a larger tract of land for which the said heirs of Vincent Rillieux have instituted a claim in this honorable court, No. 17 of the docket, and which had been purchased from the Biloxi Indians, A. D. 1761, by the said Vincent Rillieux, with the approbation of the French Government, and for which C. P. Aubry and D. N. Faucault gave a title, dated 16th March, A. D. 1765, as will further appear from the petition aforesaid, No. 17 of the docket of this honorable court, and to which, for greater certainty, your petitioner refers.

Your petitioner further shews, that said tract of land was cultivated and inhabited by the said Vincent Rillieux, previously to the year 1761, and has continued to be inhabited and cultivated by him, and those claiming under him; and the same is now cultivated and inhabited by your petitioner.

Your petitioner further shews, that claim was made to the said tract of land, as included in a larger one, by the heirs of the said Vincent Rillieux, at various times, in the land office at St. Helena, and the titles thereto enregistered; but no decision was made thereon, as the

tribunal was not competent therefor, though your petitioner is entitled to a patent therefor from the Government of the United States, under the title of, and possession, inhabitancy, and cultivation aforesaid; and the same could have become a perfect title under the Governments of France, Spain, and the United States, and should now be so recognised.

Your petitioner further shews, that he is the only person at this time in possession of the aforesaid tract of land, and no one claims, or is entitled to, any part thereof, except your petitioner.

Wherefore your petitioner prays, that the district attorney of the United States, for the district of Louisiana, may be cited to answer this petition. And that the title of your petitioner to the tract of land aforesaid may be adjudged and decreed to be valid and good, and a patent given to your petitioner therefor.

And your petitioner prays for all other and further relief which the case may require, and to equity and justice may appertain. And as in duty bound.

(Signed) ALFRED HENNEN,
Atty. for petitioner.

And on the same day was issued from the said clerk's office, in duplicate, the following process of citation:

United States district court, sitting in and for the district of Louisiana, to the marshal for the district of Louisiana, or his lawful deputy, greeting:

You are hereby commanded to summon S. W. Downs, United States district attorney, to appear before the honorable judge of the district court of the United States, sitting in and for the district of Louisiana, at a district court to be holden at New Orleans on the first Monday of July, 1846, then and there to answer a petition in chancery filed against the United States, wherein John Gusman is petitioner, and the United States is respondent.

Herein fail not, and have you then and there this writ, with your endorsement thereon how you have executed the same.

Mem. The respondent is to enter his appearance in the above entitled cause in the clerk's office, on or before the first Monday of July, 1846, otherwise the petition may be taken pro confesso.

Witness the honorable Theo. H. McCaleb, judge, this 26th day of May, New Orleans, 1846, and 70th year of American independence.

(Signed) N. R. JENNINGS, *Clerk*,
By L. E. SIMONDS, *Dy. Clerk*.

Marshal's return on the foregoing citation.

Received this 26th day of May, 1846, and the 27th day of May, 1846, served copies of the within citation, plaintiff's petition, and documents annexed, on the within named S. W. Downs, esq., United

States district attorney, in the manner following, to wit, by handing the same to him in person at New Orleans.

For WM. F. WAGNER, *U. S. marshal*,
(Signed) J. P. WALDEN, *Dep. marshal*.

And afterwards, to wit, on the seventeenth day of July, A. D. 1846, the United States, defendants, by their attorney, entered their appearance, and filed the following answer:

District court of the United States, for the district of Louisiana.

JOHN GUSMAN
vs. } No. 19.
THE UNITED STATES.

The defendants in the above named case now come by their attorney into court, and for answer to the plaintiff's petition, deny all and singular the facts and allegations therein contained.

Wherefore they pray that plaintiff's petition may be dismissed at his costs; and they pray for all such other and general relief as the nature of the case may require, and as, under the principles of equity, the court may grant.

(Signed) THOMAS J. DURANT,
Att'y of the United States for Louisiana.

Proceedings.

1847, February 9.

And afterwards, at the December term, 1846, of said court, to wit, on the 9th February, 1847, was entered of record the following

Continuance.

JOHN GUSMAN
vs. } No. 19.
THE UNITED STATES.

Tuesday, February 9, 1847; present, Hon. Theo. H. McCaleb.

The above cause, as numbered and entitled, being fixed for trial this day, was, upon motion of the United States district attorney, the court being engaged in other business, continued until further notice.

1848, May 24.

And afterwards, at the May term, 1848, to wit, on the 24th May, 1848, was duly entered the following order:

JOHN GUSMAN
vs.
THE UNITED STATES.

Wednesday, May 24, 1848; present, Hon. Theo. H. McCaleb.

This case was this day called on the general docket of land suits,

and, on motion of Hennen, counsel for plaintiffs, fixed for trial for the 12th of June, proximo.

And further, at the same term, to wit, on the 9th of June, A. D. 1848, was entered on the minutes the following

Continuance.

1848, June 9.

JOHN GUSMAN vs. THE UNITED STATES. } No. 19.

Friday, June 9, 1848; present, Hon. Theo. H. McCaleb.

On motion of A. Hennen, esq., of counsel for the plaintiffs, it is ordered that these cases be continued.

1849, March 8.

And further, at the same term, to wit, on the eighth day of March, A. D. 1849, the complainant, by his counsel, filed the following replication:

JOHN GUSMAN vs. THE UNITED STATES. }

DISTRICT COURT, U. S., *Louisiana district.*

Replication of the complaint to the answer of the defendants.

This repliant, saving all benefit of exception, &c., says that he will maintain and prove said bill to be true and sufficient in law, and that the answer of the defendants is insufficient, as this honorable court shall direct; and he prays as he hath prayed in his bill.

(Signed) A. HENNEN, *Solicitor.*

And further, at the same term, and on the same day, was entered the following

Hearing and submission.

JOHN GUSMAN vs. THE UNITED STATES. } No. 19.

Thursday, March 8, 1849; present, Hon. Theo. H. McCaleb.

This cause was to-day taken up for hearing; Alfred Hennen, esq., solicitor of the complainants, and the U. S. attorney, for the defendants, present. The evidence adduced and offered in the case of the heirs of Vincent Rillieux vs. the United States, No. 17 of the record of

land causes, being, by consent of parties, filed September 12, 1846, also offered herein, the cause was thereon taken under advisement by the court.

NOTA BENE.—For evidence offered, see record of case of heirs of Rillieux vs. United States, folios .

The plaintiff also offered an outline of survey, by Ab'm Penn, U. S. deputy surveyor, as follows:

[For map, see original, between pages 7 and 8.]

And afterwards, at the May term, 1849, of said court, to wit, on the 15th June, 1849, there was rendered, and duly recorded, and on the 16th June, engrossed and signed, in the words following:

The judgment of the court.

May term, 1849.

FRIDAY, *June 15th*, 1849.

Present, the honorable Theo. H. McCaleb.

JOHN GUSMAN
vs.
THE UNITED STATES. } No. 19.

This cause came on to be heard at the February term, to wit, on the 8th day of March last, on the petition, answer, replication, exhibits, depositions, and testimony of witnesses examined in open court, and was argued by counsel for the complainant, and the U. S. district attorney for the defendants; and the court having fully considered the same, and being duly advised thereof, this day delivered its opinion and decree, as follows:

The petitioner claims a tract of land on the east bank of the bayou Bonfouca, about nine miles from its confluence with Lake Pontchartrain, having a front on said bayou of three miles, with the depth of a double concession, forming a part of the tract of land claimed by the heirs of Vincent Rillieux, and derived from them.

For the reasons given in the case of the said heirs of Vincent Rillieux versus the United States, No. seventeen of the docket, the court considers this a valid claim, which should be confirmed.

It is therefore ordered, adjudged, and decreed, that the claim of the petitioner to the tract of land in his petition described, be confirmed and adjudged valid against the United States, the defendants, and that the same be surveyed, with a front of three miles on the east side of bayou Bonfouca, and with the depth of a double concession, about nine miles from its confluence with Lake Pontchartrain.

It is further ordered, adjudged, and decreed that, should any portion of the said land, so confirmed to the petitioner, have been sold or oth-

erwise disposed of by the United States, then the said petitioner shall be, and he is hereby, authorized, under and in conformity to the 11th section of the act of May 26th, 1824, to enter in any land office in the State of Louisiana, in parcels conformable to sectional divisions and subdivisions, a like quantity of public lands, after the same shall have been offered at public sale.

Judgment rendered, 15th June, 1849.

Judgment signed, 16th June, 1849.

(Signed) THEO. H. McCALEB, [SEAL.]
U. S. judge.

And further, at the same term, to wit, on the 16th June, 1849, was moved for by the attorney of the United States, and obtained, and duly recorded, the following—

Order of appeal.

Saturday, June 16th, 1849.

Present, honorable Theo. H. McCaleb.

JOHN GUSMAN vs. THE UNITED STATES. } No. 19.

On motion of Logan Hunton, attorney of the United States, for the eastern district of Louisiana, and of Thomas J. Durant, on the same behalf, and on giving the court to understand and be informed that the United States are injured and aggrieved by the judgment of this honorable court rendered against them at this term in the matter of John Gusman vs. the United States, and desire to appeal therefrom:

It is thereupon ordered by the court, that an appeal be allowed in favor of the United States from the judgment aforesaid, returnable to the Supreme Court of the United States at the next term thereof after the date of this order.

And finally, at the same term, and on the 31st October, 1849, was entered into, signed, and filed, the following:

Agreement adjourning return day of appeal.

EASTERN DISTRICT OF LOUISIANA,
U. S. district court.

JOHN GUSMAN vs. THE UNITED STATES. } No. 19.

It is herein agreed between the party plaintiff and the defendants, that the return day of the appeal hitherto granted said defendants, and now of record, and made returnable on the first Monday of December, 1849, into the Supreme Court of the United States, be, and it is hereby, by mutual consent and understanding, extended until the first